



TEXAS DEPARTMENT OF INSURANCE

Division of Workers' Compensation - Medical Fee Dispute Resolution (MS-48)

7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645

(512) 804-4000 | F: (512) 804-4811 | (800) 252-7031 | TDI.texas.gov | @TexasTDI

MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name

SPRING BRANCH MEDICAL CENTER

Respondent Name

AMERICAN HOME ASSURANCE CO

MFDR Tracking Number

M4-05-8296

Carrier's Austin Representative

Box Number 19

MFDR Date Received

JUNE 14, 2004

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "The carrier denied this claim alleging pre-authorization was required. In support of the hospital's request, the hospital shows the following: 1) the patient's medical condition met the definition of medical emergency as defined by the rules of the Texas Workers Compensation Commission (herein 'TWCC'); 2) healthcare to treat a medical emergency does not require preauthorization under the rules of the TWCC; 3) the patient's medical condition did not cease being a medical emergency once the patient was transferred from the ER to an acute care inpatient setting; 4) the hospital contacted the carrier and/or the carrier's agent for the specific purpose of obtaining an authorization, but were specifically advised not pre-cert was required then the patient came in through the ER; and 5) pursuant to the rules of the TWCC, this claim is to be reimbursed at the stop-loss rate of 75% of audited charges."

Amount in Dispute: \$72,641.52

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary Dated June 30, 2004: "The employee was admitted from 8/4/03-8/16/03 for a post-op infection. However, once the employee was stabilized this would no longer be considered an emergency and therefore, the provider would require authorization from the carrier for the remaining inpatient stay"

Response Submitted by: The Hartford

Respondent's Supplemental Position Summary Dated April 26, 2017: Respondent submits this Respondent's Post-Appeal Supplemental Response as a response to and incorporation of the Third Court of Appeals Mandate in Cause No. 03-07-00682-CV...Based upon Respondent's initial and all supplemental responses, and under the Division's obligation to adjudicate the payment, under the Labor Code and Division rules, Requestor has failed to sustain its burden of proving entitlement to the stop-loss exception. The Division must conclude that payment should be awarded under the general per diem payment under 28 TEX. ADMIN. CODE §134.401 (repealed). Otherwise, the Division should determine the proper audited charges under Division audit obligations and rules."

Response Submitted by: Flahive, Ogden & Latson

SUMMARY OF FINDINGS

| Disputed Dates | Disputed Services | Amount In Dispute | Amount Due |
|--|-----------------------------|-------------------|-------------|
| August 4, 2003 through August 16, 2003 | Inpatient Hospital Services | \$72,641.52 | \$14,742.00 |

FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

Background

1. 28 Texas Administrative Code §133.305 and §133.307, applicable to requests filed on or after January 15, 2007, sets out the procedures for resolving medical fee disputes.
 2. 28 Texas Administrative Code §134.600 requires preauthorization for non-emergency inpatient hospitalizations.
 3. 28 Texas Administrative Code §133.1 defines a medical emergency.
 4. 28 Texas Administrative Code §134.401, 22 Texas Register 6264, effective August 1, 1997, sets out the fee guidelines for inpatient services rendered in an acute care hospital for the date of admission in dispute.
 5. The Third Court of Appeals' November 13, 2008 opinion in *Texas Mutual Insurance Company v. Vista Community Medical Center, LLP*, 275 South Western Reporter Third 538, 550 (Texas Appeals – Austin 2008, petition denied) addressed a challenge to the interpretation of 28 Texas Administrative Code §134.401. The Court concluded that "to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed \$40,000 and that an admission involved unusually costly and unusually extensive services."
 6. The services in dispute were reduced / denied by the respondent with the following reason codes:
A-Pre-Authorization Not Obtained.
5. Dispute M4-05-8296 History
- The division originally issued a decision on May 24, 2005.
 - The dispute decision was appealed to the District Court.
 - The 345th Judicial District remanded the dispute to the division pursuant to an agreed order of remand D-1-GN-08-000218 dated November 29, 2016.
 - As a result of the remand order, the dispute was re-docketed at the division's medical fee dispute resolution section.
 - M4-05-8296-02 is hereby reviewed.

Issues

1. Did the audited charges exceed \$40,000.00?
2. Did the admission in dispute involve unusually extensive services?
3. Did the admission in dispute involve unusually costly services?
4. Does a Preauthorization issue exist?
5. Is the requestor entitled to additional reimbursement?

Findings

This dispute relates to inpatient surgical services provided in a hospital setting with reimbursement subject to the provisions of Division rule at 28 Texas Administrative Code §134.401, titled *Acute Care Inpatient Hospital Fee Guideline*, effective August 1, 1997, 22 Texas Register 6264. The Third Court of Appeals' November 13, 2008 opinion in *Texas Mutual Insurance Company v. Vista Community Medical Center, LLP*, 275 South Western Reporter Third 538, 550 (Texas Appeals – Austin 2008, petition denied) addressed a challenge to the interpretation of 28 Texas Administrative Code §134.401. The Court concluded that "to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed \$40,000 and that an admission involved unusually costly and unusually extensive services." Both the requestor and respondent in this case were notified via form letter that the mandate for the decision cited above was issued on January 19, 2011. Each was given the opportunity to supplement their original MDR submission, position or response as applicable. The documentation filed by the requestor and respondent to date will be

considered in determining whether the admission in dispute is eligible for reimbursement under the stop-loss method of payment. Consistent with the Third Court of Appeals' November 13, 2008 opinion, the Division will address whether the total audited charges **in this case** exceed \$40,000; whether the admission and disputed services **in this case** are unusually extensive; and whether the admission and disputed services **in this case** are unusually costly. 28 Texas Administrative Code §134.401(c)(2)(C) states, in pertinent part, that "Independent reimbursement is allowed on a case-by-case basis if the particular case exceeds the stop-loss threshold as described in paragraph (6) of this subsection..." 28 Texas Administrative Code §134.401(c)(6) puts forth the requirements to meet the three factors that will be discussed.

1. 28 Texas Administrative Code §134.401(c) (6) (A) (i) states "to be eligible for stop-loss payment the total audited charges for a hospital admission must exceed \$40,000, the minimum stop-loss threshold." Furthermore, (A) (v) of that same section states "Audited charges are those charges which remain after a bill review by the insurance carrier has been performed." Review of the explanation of benefits issued by the carrier finds that the carrier did not deduct any charges in accordance with §134.401(c) (6) (A) (v); therefore the audited charges equal \$96,855.36. The division concludes that the total audited charges exceed \$40,000.
2. The requestor in its position statement presumes that it is entitled to the stop loss method of payment because the audited charges exceed \$40,000. As noted above, the Third Court of Appeals in its November 13, 2008 opinion rendered judgment to the contrary. The Court concluded that "to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed \$40,000 and that an admission involved...unusually extensive services." The requestor failed to demonstrate that the particulars of the admission in dispute constitute unusually extensive services; therefore, the division finds that the requestor did not meet 28 Texas Administrative Code §134.401(c) (6).
3. In regards to whether the services were unusually costly, the requestor presumes that because the bill exceeds \$40,000, the stop loss method of payment should apply. The Third Court of Appeals' November 13, 2008 opinion concluded that in order to be eligible for reimbursement under the stop-loss exception, a hospital must demonstrate that an admission involved unusually costly services thereby affirming 28 Texas Administrative Code §134.401(c)(6) which states that "Stop-loss is an independent reimbursement methodology established to ensure fair and reasonable compensation to the hospital for unusually costly services rendered during treatment to an injured worker." The requestor failed to demonstrate that the particulars of the admission in dispute constitutes unusually costly services; therefore, the division finds that the requestor failed to meet 28 Texas Administrative Code §134.401(c) (6).
4. According to the explanation of benefits, the respondent denied reimbursement for the disputed services based upon "A-Pre-Authorization Not Obtained."

The requestor wrote, "The carrier denied this claim alleging pre-authorization was required. In support of the hospital's request, the hospital shows the following: 1) the patient's medical condition met the definition of medical emergency as defined by the rules of the Texas Workers Compensation Commission (herein 'TWCC'); 2) healthcare to treat a medical emergency does not require preauthorization under the rules of the TWCC; 3) the patient's medical condition did not cease being a medical emergency once the patient was transferred from the ER to an acute care inpatient setting; 4) the hospital contacted the carrier and/or the carrier's agent for the specific purpose of obtaining an authorization, but were specifically advised not pre-cert was required then the patient came in through the ER."

28 Texas Administrative Code §134.600(h) states "The non-emergency health care requiring preauthorization includes: (1) inpatient hospital admissions including the principal scheduled procedure(s) and the length of stay."

28 Texas Administrative Code §133.1(a)(7)(A), defines "a medical emergency consists of the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, that the absence of immediate medical attention could reasonably be expected to result in placing the patient's health and/or bodily functions in serious jeopardy, and/or serious dysfunction of any body organ or part."

A review of the submitted medical records indicate '...was seen in the ER stating that her back locked up and she could not turn the previous day...complaining of back and left leg pain...numbness and weakness in the left leg for about one day...she was found to have decreased oxygen saturation and also cardiomegaly. She was admitted to PCU for telemetry...' The patient was "...seen by infectious disease on 8/5/03..." "On 8/6/03...She continued to complain of back and leg pain along with a weak EHL and tibialis anterior which was a problem from her previous surgeries...we received the cultures back and they revealed it was methicillin-resistant Staphylococcus aureus, just a regular Staph infection...On 8/8/03, the patient was taken to the operating room for incision and drainage of her lumbar spine and placement of antibiotic beads...Deep space abscess of the lumbar spine was also seen. It was also revealed that the left L5 screw was broken...the lumbar wound was debrided and reposition of the left L5 screw...On 8/16/03...the patient was discharged...". Therefore, this admission appears to be a medical emergency and preauthorization is not required.

5. For the reasons stated above the services in dispute are not eligible for the stop-loss method of reimbursement. Consequently, reimbursement shall be calculated pursuant to 28 Texas Administrative Code §134.401(c)(1) titled *Standard Per Diem Amount* and §134.401(c)(4) titled *Additional Reimbursements*. The Division notes that additional reimbursements under §134.401(c)(4) apply only to bills that do not reach the stop-loss threshold described in subsection (c)(6) of this section.

- Division rule at 28 Texas Administrative Code §134.401(c)(3)(ii) states, in pertinent part, that “The applicable Workers' Compensation Standard Per Diem Amount (SPDA) is multiplied by the length of stay (LOS) for admission...” Review of the submitted documentation finds that the length of stay for this admission was 9 surgical days and 3 ICU/CCU; therefore the standard per diem amounts of \$1,118.00 and \$1,560.00 apply respectively. The per diem rates multiplied by the allowable days result in a total allowable amount of \$14,742.00.
- 28 Texas Administrative Code §134.401(c)(4)(A), states “When medically necessary the following services indicated by revenue codes shall be reimbursed at cost to the hospital plus 10%: (i) Implantables (revenue codes 275, 276, and 278), and (ii) Orthotics and prosthetics (revenue code 274).” A review of the submitted explanation of benefits indicates that the requestor billed a total of \$496.75 for revenue code 278. Review of the requestor’s medical bill finds that the following items were billed under revenue code 278 and are therefore eligible for separate payment under §134.401(c)(4)(A):

| Code | Itemized Statement Description | No. of Units | UNITS / Cost Per Unit | Total Cost | Cost + 10% |
|-----------------|--------------------------------|--------------|-----------------------------|------------|------------|
| 278 | Cement Bone Full dose | 1 | No support for cost/invoice | \$0.00 | \$0.00 |
| TOTAL ALLOWABLE | | | | \$00.00 | |

- 28 Texas Administrative Code §134.401(c)(4)(B) allows that “When medically necessary the following services indicated by revenue codes shall be reimbursed at a fair and reasonable rate: (ii) Computerized Axial Tomography (CAT scans) (revenue codes 350-352,359).” A review of the submitted hospital bill finds that the requestor billed \$2,128.75 for one unit of revenue code 350-CT Scan. 28 Texas Administrative Code §133.307(g)(3)(D), requires the requestor to provide “documentation that discusses, demonstrates, and justifies that the payment amount being sought is a fair and reasonable rate of reimbursement.” Review of the submitted documentation finds that the requestor does not demonstrate or justify that the amount sought for revenue code 350 would be a fair and reasonable rate of reimbursement. Additional payment cannot be recommended.
- 28 Texas Administrative Code §134.401(c)(4)(B) allows that “When medically necessary the following services indicated by revenue codes shall be reimbursed at a fair and reasonable rate: (iv) Blood (revenue codes 380-399).” A review of the submitted hospital bill finds that the requestor billed \$768.00 for revenue code 390-Blood/Storage Processing. 28 Texas Administrative Code §133.307(g)(3)(D), requires the requestor to provide “documentation that discusses, demonstrates, and justifies that the payment amount being sought is a fair and reasonable rate of reimbursement.” Review of the submitted documentation finds that the requestor does not demonstrate or justify that the amount sought for revenue code 390 would be a fair and reasonable rate of reimbursement. Additional payment cannot be recommended.
- 28 Texas Administrative Code §134.401(c)(4)(C) states “Pharmaceuticals administered during the admission and greater than \$250 charged per dose shall be reimbursed at cost to the hospital plus 10%. Dose is the amount of a drug or other substance to be administered at one time.” A review of the submitted itemized statement finds that the requestor billed \$747.98/unit for Advair 500/50, and \$860.91/unit for PCA Morphine. The requestor did not submit documentation to support what the cost to the hospital was for these pharmaceuticals. For that reason, additional reimbursement for these items cannot be recommended.

The division concludes that the total allowable for this admission is \$14,742.00. The respondent issued payment in the amount of \$0.00. Based upon the documentation submitted, reimbursement of \$14,742.00 can be recommended.

Conclusion

For the reasons stated above, the division concludes that the services in dispute are not eligible for the stop-loss method of reimbursement, that a pre-negotiated rate does not apply, and that application of 28 Texas Administrative Code §134.401(c)(1) titled *Standard Per Diem Amount* and §134.401(c)(4) titled *Additional Reimbursements*, results in the total allowable reimbursement. Based upon the documentation submitted, the requestor's Table of Disputed Services, and reimbursement made by the respondent, the amount ordered is \$14,742.00.

ORDER

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code Sections 413.031 and 413.019 (if applicable), the Division has determined that the requestor is entitled to additional reimbursement for the services involved in this dispute. The Division hereby **ORDERS** the respondent to remit to the requestor the amount of \$14,742.00 plus applicable accrued interest per 28 Texas Administrative Code §34.803, due within 30 days of receipt of this Order.

Authorized Signature

| | | |
|--------------------|---|-----------------------------|
| _____ Signature | _____ Medical Fee Dispute Resolution Officer | 05/04/2017 _____ Date |
|--------------------|---|-----------------------------|

YOUR RIGHT TO APPEAL

Either party to this medical fee dispute may appeal this decision by requesting a contested case hearing. A completed **Request for a Medical Contested Case Hearing** (form **DWC045A**) must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision* together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a **certificate of service demonstrating that the request has been sent to the other party.****

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.